

Chapter 4

Case Disposition

I. Scope.

This chapter sets forth the policies and procedures for arriving at a determination on the merits of a whistleblower case; policies regarding withdrawal, settlement, dismissal, postponement, deferrals, appeals, and litigation; adequacy of remedies; and agency tracking procedures for timely completion of cases.

II. Preparation.

A. Investigator Reviews the File.

After completing the investigation, the investigator must thoroughly review the file and its contents to collate and organize all pertinent data in preparation for writing the Report of Investigation (ROI). When appropriate, the investigator may wish to discuss the case with the IA/Legal Staff prior to writing the ROI.

B. Investigator and IA/Legal Staff Discuss the Case.

Once the investigator has thoroughly reviewed the file and compiled all pertinent data, the IA/Legal Staff may be contacted to discuss the facts and merits of the case prior to writing the ROI. The IA/Legal Staff can advise the investigator of any issues and, as appropriate, assist in reaching a decision on the merits or decide whether additional investigation is necessary.

III. Report of Investigation

The investigator must report the results of the investigation by means of a Report of Investigation (ROI) following the policies and format described in detail in Chapter 5 of this Manual.

IV. Case Review.

A. Review.

After the investigation is completed, the IA may review the file to ensure technical accuracy, thoroughness of the investigation, applicability of law, completeness of the report, and merits of the case. Appropriate determination letters will be prepared by the investigator.

B. Approval

If the Supervisor concurs with the analysis and recommendation of the investigator, he or she will sign on the signature block on the last page of the ROI and record the date the review was completed. The Supervisor's signature on the ROI serves as approval of the recommended determination. Therefore, a thorough review of the case file is essential prior to issuing any determination letters. Appropriate determination letters must be issued to the parties via certified U.S. mail, return receipt requested (or via a third-party commercial carrier that provides delivery confirmation). Proof of receipt must be preserved in the file with copies of the letters to maintain accountability.

1. Withdrawal.

A complainant may withdraw his or her complaint at any time during IOSHA's processing of the complaint. However, it should be made clear to the complainant that by entering a withdrawal on a case, he or she is forfeiting all rights to appeal or object, and the case will not be reopened. Withdrawals may be requested either orally or in writing. It is advisable, however, to obtain a signed withdrawal whenever possible. (See sample complaint withdrawal request form at the end of this chapter.) In cases where the withdrawal request is made orally, the investigator must send the complainant a letter outlining the above information and confirming the oral request to withdraw the complaint. Once the supervisor reviews and approves the request to withdraw the complaint, a second letter must be sent to the complainant, clearly indicating that the case is being closed based on the complainant's oral request for withdrawal. Both letters must be sent via certified U.S. mail, return receipt requested (or via a third-party commercial carrier that provides delivery confirmation). Proof of delivery of both letters must be preserved in the file with copies of the letters to maintain accountability. (See sample letters at the end of this chapter.)

2. Dismissal.

For recommendations to dismiss, the investigator will prepare letters of dismissal to the complainant and the respondent. The letters must include the necessary information regarding the complainant's rights to appeal the findings. (See sample dismissal letters at the end of this chapter.)

3. Settlement.

Voluntary resolution of disputes is desirable in many whistleblower cases, and investigators are encouraged to actively assist the parties in reaching an agreement, where possible. Ideally, these settlements are reached solely through the utilization of IOSHA's standard settlement agreement. The language of this agreement generally should not be altered, but certain

sections may be included or removed to fit the circumstances of the complaint or the stage of the investigation. The investigator should use his/her judgment as to when to involve Legal Staff in settlement discussions. The investigator will obtain approval by the supervisor of the settlement agreement language prior to the parties signing the agreement. For recommendations to approve settlement, the supervisor's approval will be indicated by signature on both the settlement agreement and the ROI. The investigator will issue appropriate letters to the parties forwarding copies of the signed settlement agreement, posters, the Notice to Employees, the back pay check, or any other relevant documents, including tax-related documents. (Settlement procedures and settlement negotiations are discussed in detail in Chapter 6).

Once an employee has filed a complaint and if the case is currently open, any settlement of the underlying claims reached between the parties must be reviewed by IOSHA to ensure that the settlement is just, reasonable, and in the public interest. At the investigation stage, this requirement is fulfilled through IOSHA's review of the agreement. A copy of the reviewed agreement must be retained in the case file. If IOSHA is unable to obtain a copy of the settlement agreement, then IOSHA must reach a determination on the merits of the complaint, based on the evidence obtained. Investigators should make every effort to explain this process to the parties early in the investigation to ensure they understand our involvement in any resolution reached after a complaint has been initiated.

4. Deferral.

Voluntary resolution of disputes is desirable in many whistleblower cases. By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to complaints under 88.9(3). The investigator must review the results of any proceeding to ensure all relevant issues were addressed; that the proceedings were fair; regular; and free of procedural infirmities; and that the outcome of the proceedings was not repugnant to the purpose and policy of the IOSHA whistleblower statute. Repugnancy deals not only with the violation, but also the completeness of the remedies. If the other action was dismissed without an adjudicatory hearing, deferral is ordinarily not appropriate. If the determination is accepted, Iowa OSHA may defer to the decision as outlined above.

In cases where the investigator recommends a deferral to another agency's decision, grievance proceeding, arbitration or other appropriate action, letters of deferral will be issued to the complainant and respondent. The case will be considered closed at the time of the deferral and will be recorded in IMIS as "Dismissed." If the other proceeding results in a settlement, it will be recorded as "Settled Other," and processed in accordance with the procedures set forth in chapter 6. IOSH may defer to the determination of another agency, grievance, etc. in accordance with

IAC 875-36.10(1). Determination must be made on a case by case basis. (See sample deferral letter at the end of this chapter.)

5. Postponement.

Where the rights asserted in other proceedings are substantially the same as rights under 88.9(3), and those proceedings are not likely to violate the complainant's rights and the outcome would be the same, the investigator or the IA would be justified in postponing a determination. However, if the other action is dismissed, such dismissal may not be determinative of the complaint, and IDOL may proceed with the investigation, settlement or dismissal (IAC 875-36.10(2)). The investigator will apprise the complainant as to the reason for the postponement. This action would be done on a case by case basis.

6. Merit Finding.

For recommendations of merit cases under 88.9(3), the investigator or IA will draft a letter to Legal Staff recommending litigation.

7. Further Investigation Warranted.

If, for any reason, the IA/Legal Staff does not concur with the investigator's analysis and recommendation, or finds that additional investigation is warranted, the file will be returned to the investigator for follow-up work.

C. Legal Requirements.

The investigator should confer with Legal Staff for advice or consultation at this point, if necessary, or at other appropriate times during the conduct of the investigation to ensure that legal requirements are met. This is particularly important if preliminary, immediate reinstatement of the complainant is being ordered.

V. Appeals and Objections.

For cases in which the investigator has made a non-merit determination and the case is dismissed, the complainant is given an opportunity to appeal the decision to the Commissioner of Labor/Designee within 15 days of receipt of the dismissal letter.

1. Upon receipt of the copy of the appeal, under 88.9(3), the investigator will immediately forward the original case file to Legal Staff.

2. Legal Staff will review the file and any other documentation supplied by the complainant, and issue a decision to sustain the appeal, deny the appeal or remand the case for additional investigation.

VI. Approval for Litigation.

- A. Procedures provide that cases recommended for litigation will be forwarded to Legal Staff for review and approval for filing in District Court. If Legal Staff determines that additional investigation is required, the IA normally will return the case file to the investigator for further investigation. Legal Staff will address additional communication directly with the investigator.
- B. Additional investigation authorized as a result of the review for litigation shall have priority over all other cases pending investigation.

Sample Documents

from

Chapter Four

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Sample Complainant Withdrawal Request Cover Letter

Date

Name

Address

Re:

Dear :

Per our telephone conversation on _____, __, you requested that your discrimination complaint be withdrawn. The request for withdrawing your complaint must be in writing. A withdrawal form is enclosed. Please sign and return it to me at the address listed below by _____,--.

Investigator
Iowa Division of Labor
1000 East Grand
Des Moines IA 50319

Thank you for your interest in Safety & Health. If you have any questions, please feel free to contact me.

Sincerely;

Investigator's Name
IOSH Discrimination Investigator
Telephone Number
E-mail Address

Enclosure

Copy: Case File

Sample Withdrawal Request

IOSHA DISCRIMINATION 88.9(3) WITHDRAWAL REQUEST

This form is provided to assist the Complainant and is not intended to constitute the exclusive means by which a withdrawal may be provided to the Iowa Division of Labor Services.

The undersigned Complainant wishes to withdraw the complaint in CASE NUMBER _____.

Respondent (Employer)

Address of Respondent

I understand that I have the right to a determination by the Iowa Division of Labor Services subject to an appeal, and I waive that right.

Complainant's Signature

Date

SS #

Investigator's Signature

Title

Date

Approved by:

IOSH Administrator

Sample Complainant Withdrawal Confirmation Letter

Date

Name
Address

Re:

Dear -:

I received your letter on _____, __, stating that you were withdrawing your complaint of discrimination under the Iowa Occupational Safety & Health Act. I also talked with you on _____, __, about the settlement between yourself and _____. You expressed you were very satisfied with the outcome.

The Division of Labor Services is deferring our determination in the referenced case to the settlement reached between yourself and _____ as a result of the arbitration process. Therefore, we consider this matter closed.

If at any time our office can be of further assistance, please feel free to contact us.

Sincerely,

Investigator's Name
IOSH Discrimination Investigator
Telephone Number
E-mail Address

Copy: Case File

Sample Respondent Withdrawal Confirmation Letter

Date

Name
Address

Re:

Dear -:

Please find enclosed a copy of my acknowledgement of _____'s withdrawal and assurance during our telephone conversation that he/she is satisfied with the settlement.

I will be closing this case as of today, and no further action will be taken by the Division of Labor.

Sincerely,

Investigator's Name
IOSH Discrimination Investigator
Telephone Number
E-mail Address

Enclosure

Copy: Case File

Sample Complainant Dismissal Letter

Date

Name
Address

RE:

Dear :

Your complaint of discrimination under Iowa Code 88.9(3) of the Iowa Occupational Safety and Health Act has been investigated and the results carefully considered.

As a result of the investigation, it appears that the burden of establishing that you were discriminated against in violation of the above-cited section of the Act cannot be sustained. The evidence developed during the investigation was not sufficient to support the finding of a violation. Accordingly, we are dismissing your complaint.

Any appeal of this determination must be filed in writing within fifteen days of the receipt of this letter and addressed to:

Commissioner of Labor
DIVISION OF LABOR SERVICES
1000 East Grand Avenue
Des Moines, Iowa 50319

Sincerely,

Investigator's Name
IOSH Discrimination Investigator
Telephone Number
E-mail Address

Copy: Case File

Sample Respondent Dismissal Letter

Date

Name
Address

RE:

Dear:

The complaint in the above referenced matter alleging unlawful discrimination under Iowa Code 88.9(3) of the Iowa Occupational Safety and Health Act has been dismissed by this office. However, the Complainant has 15 days in which to file an appeal of this dismissal with the Iowa Division of Labor. In the event that no appeal action is taken by the Complainant, the case will be closed.

If at any time you have any questions or require any information regarding employee rights and employer responsibilities under the Iowa Occupational Safety and Health Act, please feel free to contact this office.

Sincerely,

Investigator's Name
IOSH Discrimination Investigator
Telephone Number
E-mail Address

Copy: Case File

Sample Complainant Informal Settlement Letter

Date

Name

Address

Re:

Dear:

The complaint in the above referenced matter alleging unlawful discrimination under Iowa Code 88.9(3) of the Iowa Occupational Safety and Health Act has been informally settled to the satisfaction of you as the Complainant, _____, Investigator for the Iowa Division of Labor, and _____, _____, and representative for the company as agreed in a meeting held on _____.

Therefore, as of today I am closing CF# _____ as settled. If you have any questions concerning this case or any pertaining to safety and health issues, please feel free to contact me.

Sincerely,

Investigator's Name

IOSH Discrimination Investigator

Telephone Number

E-mail Address

Copy: Case File

Sample Respondent Informal Settlement Letter

Date

Name
Address

Re:

Dear :

The complaint in the above referenced matter alleging unlawful discrimination under Iowa Code 88.9(3) of the Iowa Occupational Safety and Health Act has been informally settled to the satisfaction of the Complainant _____, _____, Investigator for the Iowa Division of Labor and you as representative for the company as agreed in a meeting held on _____.

Therefore, as of today I am closing CF# _____ as settled. If you have any questions concerning this case or any pertaining to safety and health issues, please feel free to contact me.

Sincerely,

Investigator's Name
IOSH Discrimination Investigator
Telephone Number
E-mail Address

Copy: Case File

Sample Deferral Letter

Date

Name
Address

Re:

Dear :

I have received your discrimination complaint under Iowa Code 88.9(3) of the Iowa Occupational Safety and Health Act. The above referenced matter has been referred to Federal OSHA as a possible complaint under section 405 of the Surface Transportation Assistance Act. Iowa has no jurisdiction and does not investigate 405 cases.

With the referral, your complaint with this office is administratively closed.

The person to contact at OSHA is:

Christine D. Stewart, Regional Supervisory Investigator
Kansas City Regional Office
City Center Square
1100 Main Street - Suite 800
Kansas City, Missouri 64105
Telephone 816-426-5230

Mrs. Stewart or another investigator from that office will be contacting you for information.

If you have any questions, please feel free to contact us.

Sincerely,

Investigator's Name
IOSH Discrimination Investigator
Telephone Number
E-mail Address

Copy: Case File

Sample Complainant Litigation Letter

Date

Name

Address

Re:

Dear:

This is to advise that I have completed my investigation of your complaint of discrimination under Iowa Code 88.9(3) of the Iowa Occupational Safety and Health Act and find reasonable cause to believe that a violation exists. Attempts to settle the matter with the Respondent have been unsuccessful; and, therefore, I am referring your case to our legal staff, recommending litigation.

An attorney of the Division of Labor will be responsible for further actions in this matter. If you have any questions, please contact him/her at:

Name
Division of Labor
1000 East Grand
Des Moines, Iowa 50319
Telephone Number
E-mail Address

Sincerely,

Investigator's Name
IOSH Discrimination Investigator
Telephone Number
E-mail Address

Copy: Case File

Sample Respondent Litigation Letter

Date

Name

Address

Re:

Dear:

The Iowa Division of Labor has completed its investigation of the complaint of _____, a former employee who alleged that _____ discriminated against him/her in violation of Iowa Code 88.9(3) of the Iowa Occupational Safety and Health Act. As set forth in the attached findings, it has been determined that there is reasonable cause to believe that the complaint has merit. Consequently, the enclosed documents require that you offer _____ reinstatement to his/her former position and pay immediately; compensate the Complainant with back pay and all monies lost due to the action taken; and expunge from _____ personnel records any adverse references to the discharge or any protected activity.

_____ will be informed of this decision by separate letter on this date.

Please contact me within five (5) days from receipt of this letter to discuss this matter. If I do not hear from you, this case will be turned over to our Legal Department with a recommendation to pursue legal action.

Sincerely,

Investigator's Name

IOSH Discrimination Investigator

Telephone Number

E-mail Address

Copy: Case File

Sample Litigation Referral Memorandum

Date:

Memo To: Attorney (Legal Staff)

From: Investigator's Name
IOSH Discrimination Investigator

RE: Complainant's Name/Respondent Name/Case File #
Litigation Referral

Sample Dismissal Letter After Legal Staff Review

Date

Name
Address

Re:

Dear:

Your complaint of discrimination alleging a violation of Iowa Code 88.9(3) of the Iowa Occupational Safety and Health Act has been thoroughly reviewed by our Legal Staff. As a result of their review, it has been determined that there is insufficient evidence to support a finding of a violation of Iowa Code 88.9(3) of the Act by the respondent in this case. Therefore, the case was deemed unsuitable for litigation. Further proceedings in this matter are deemed unwarranted and the complaint is hereby dismissed.

Any appeal of this determination must be filed in writing within fifteen days of the receipt of this letter and addressed to:

Commissioner of Labor
DIVISION OF LABOR SERVICES
1000 East Grand Avenue
Des Moines, Iowa 50319

Sincerely,

IOSH Administrator
Telephone Number
E-mail Address

Copy: Case File